

*2015 OEP Land use Planning Conference*  
*May 2, 2015*

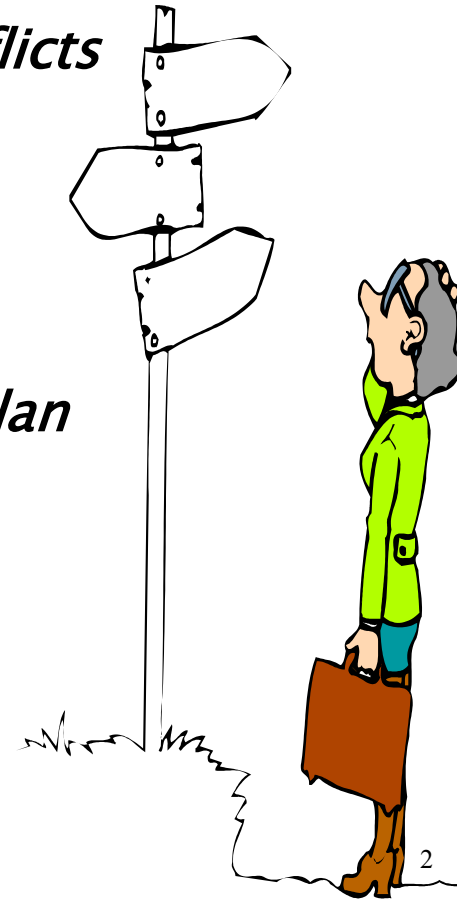
## ***Planning Board Basics***

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# Goals of this Session

- ❖ **Provide General Guidance in the Basics for New Hampshire Planning Boards**
- ❖ *Enabling Legislation & Local Government Powers*
- ❖ *Planning & Regulation: Past & Present*
- ❖ *The New Hampshire Scheme*
- ❖ *PB Organization, Officers, & General Duties; Conflicts of Interest*
- ❖ *Becoming and Being a PB Member*
- ❖ *PB By-Laws or Rules of Procedure*
- ❖ *Meetings and Procedures*
- ❖ *Planning, Zoning, Subdivision Regulation & Site Plan Review*
- ❖ *Decisions and Decision-Making*
- ❖ *Understanding Appeals*
- ❖ *Access to Proceedings & Records*



# ***Enabling Legislation & Local Government Powers***

***Some words to live by:***

***“Get thee to a statute book!”***

***“Don’t try to do it alone or  
reinvent the wheel – unless you  
have to!”***

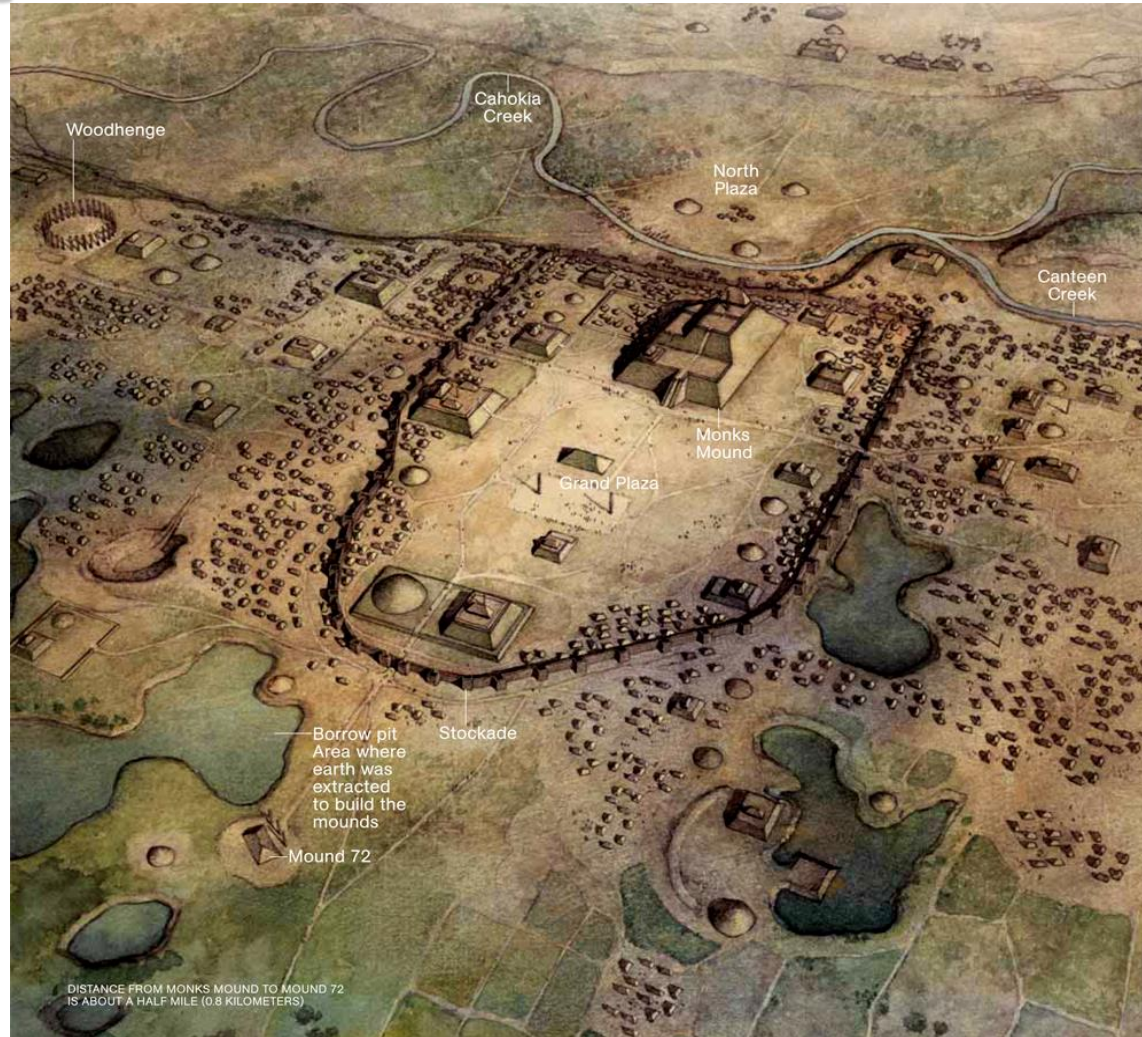
# ***Resources***

- ❖ **OEP, RPCs, & NHMA**
- ❖ **Town Documents: Historical & Current – Including the Master Plan**
- ❖ **RSAs & Your Municipal Lawyer**
- ❖ **NH Municipal Lawyers Association (NHMLA) Local Government Seminars**
- ❖ **Other Board Members and Other Boards**
- ❖ **Common Sense**



# *Planning & Regulation: Past & Present*

*Rome  
Ireland  
Maya  
Aztec  
Inca &  
Cahokia, ILL*



# ***“Modern Planning”***

- ❖ **SZEA & SCPEA**
- ❖ **RSA 31 & 36 reenacted as TITLE LXIV**
  - ❖ **CH. 672: GENERAL PROVISIONS**
  - ❖ **CH. 673: LOCAL LAND USE BOARDS**
  - ❖ **CH. 674: LOCAL LAND USE PLANNING & REGULATORY POWERS**
  - ❖ **CH. 675: ENACTMENT & ADOPTION PROCEDURES**
  - ❖ **CH. 676: ADMINISTRATIVE & ENFORCEMENT PROCEDURES**
  - ❖ **CH. 677: REHEARING AND APPEAL PROCEDURES**
  - ❖ **CHAPTER 678: COMMUNITY SERVICES & CARE PLANNING BOARDS**

# *The New Hampshire Scheme*

- ❖ Powers vested primarily in local government
- ❖ BUT
  - ❖ Home Rule v. Dillon's Rule
    - ❖ Need for enabling legislation
    - ❖ Compliance with legislative requirements
      - ❖ Why?
        - ❖ Because the Legislature says so

# *Planning Board Organization; Officers; General Duties; Conflicts of Interest*

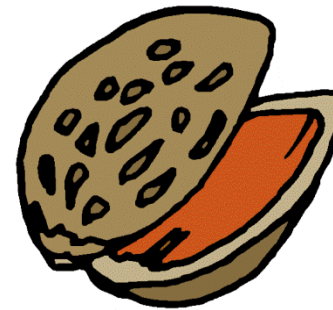
## ❖ Basics of PB Powers & Duties

- ❖ Master Planning
- ❖ Compiling Capital Improvements Program
- ❖ Growth Management
- ❖ Zoning Ordinance
- ❖ Subdivision and Site Plan Regulations
- ❖ Review of Applications
- ❖ Official Map (RSA 674:10)
- ❖ Earth Excavation Permits
- ❖ Special/Conditional Use Permits

■ **Don't Stop Thinking About Tomorrow!"**



# PB Organization in a



- ❖ RSA 673:2      Membership, Appointment or Election
- ❖ RSA 673:5, :6, :7      Terms, Alternates, Serving on Other Boards
- ❖ RSA 673:8      Organization, Terms of Chair and Officers
- ❖ RSA 673:13      Removal of Members
- ❖ RSA 673:16      Staff and Finances
- ❖ RSA 673:17      Open Meetings and Records – And Don't Forget RSA 91-A

# *Conflicts of Interest*

- ❖ *RSA 673:14*
- ❖ *RSA 31:39-a“*
- ❖ *“Know thyself – and Have a Thick Skin!”*
- ❖ *And don't forget, common sense.*

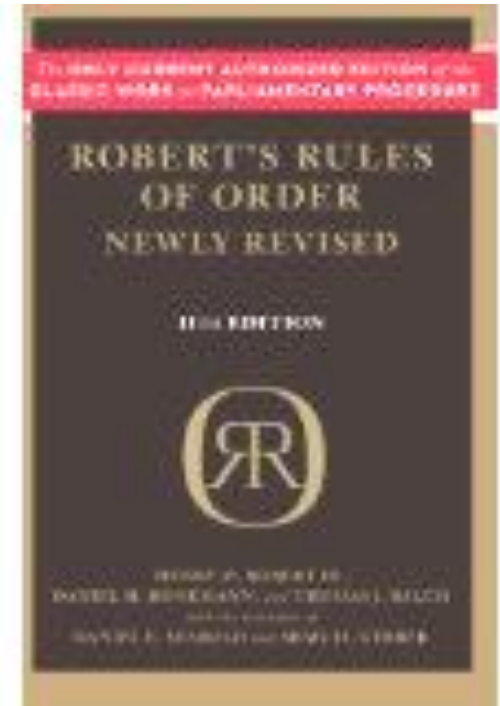
# *Becoming & Being a Planning Board Member*

## ❖ The Oath of Office

- ❖ . . . *agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire*
- ❖ *You don't need a law degree, but "if a policeman must know the Constitution, why should not a planner?"*
- ❖ *You don't need to memorize the RSAs, but your oath of office says you will perform your duties to the best of your ability and in accordance with the law –*
- ❖ *Should ignorance of the law excuse malpractice of planning and regulation?*

# *PB By-Laws or Rules of Procedure*

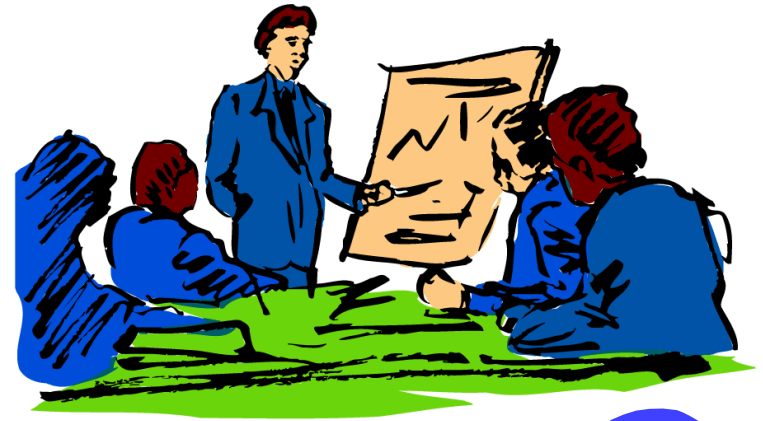
- ❖ You don't need “parliamentary rules”



- ❖ But you do need something
  - ❖ Why?
    - ❖ Because the legislature says so
    - ❖ But also because you really need them.

# *Meetings and Procedures*

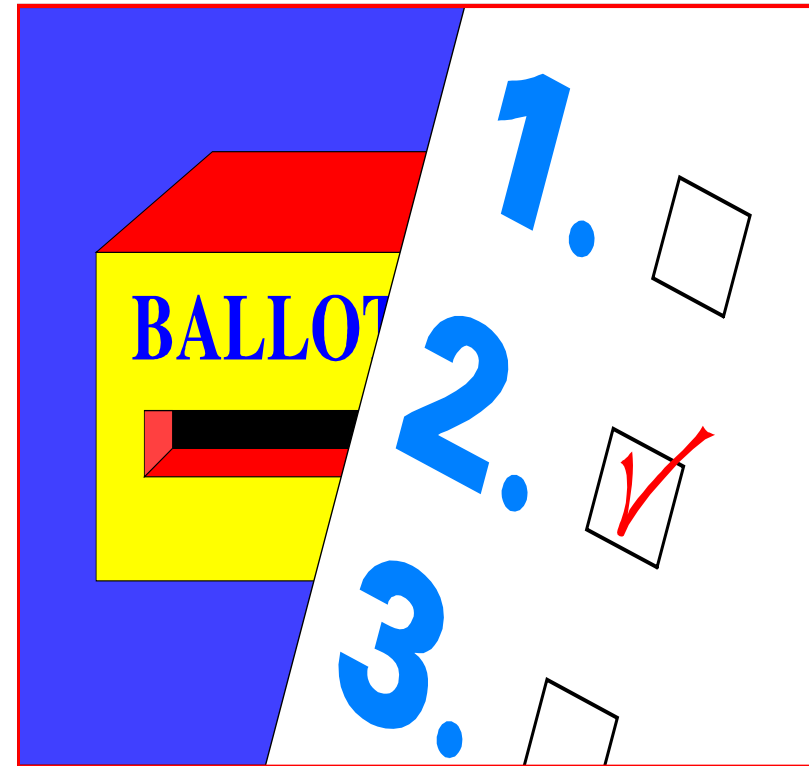
- ❖ Meeting v. Hearing
- ❖ Notice
- ❖ Procedure and Due Process or Process that is Due
- ❖ Dealing with Lawyers, Gadflies & Other Undesirables
- ❖ Requests for Findings & Rulings





# *Zoning Ordinance Amendment Procedure*

- ❖ Who Proposes?
- ❖ PB Role on Selectmen's or Petitioned Amendments
- ❖ The Hearing
- ❖ The Ballot Question Wording
- ❖ Protest Petitions



# *Decisions , Decision-Making & Notices of Decision*

- ❖ **“You gotta do it!”**
- ❖ **Many decisions have to be made, such as:**
  - ❖ **Reject or accept application;**
  - ❖ **Act on waivers if requested;**
  - ❖ **Approve or deny approval of the application;**
  - ❖ **Defer consideration on an application, being mindful of deadlines to action;**
  - ❖ **Impose conditions on approval.**

# When and How to Make Decision

- ❖ Before the notice of decision is finalized
  - ❖ But you can use a draft decision as a guideline
- ❖ Decision should be made by a motion that is clear and, if required or appropriate, should include reasons
- ❖ Include conditions if appropriate



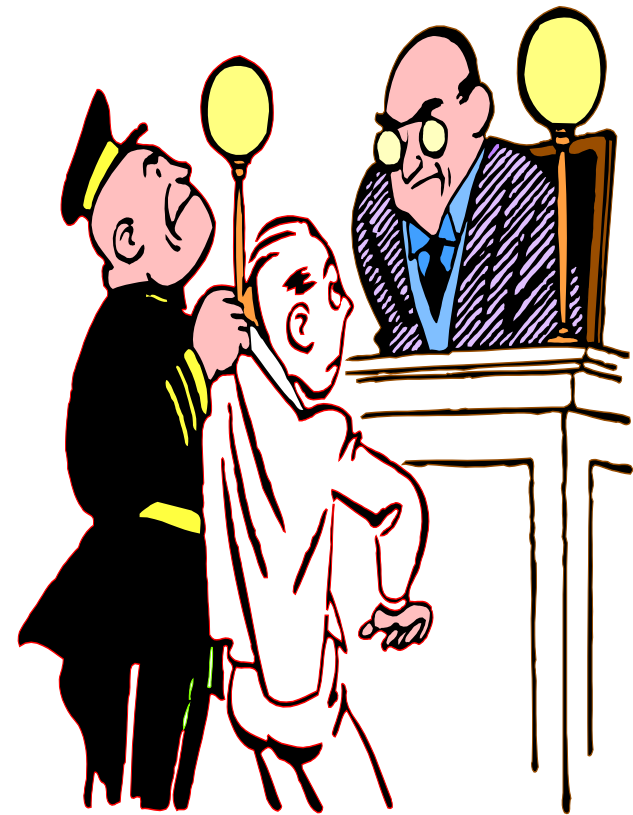
# The notice of decision can be vital

- ❖ 1. It tells the world what the PB did – and maybe why!
- ❖ 2. Purpose of notice of decision is to let parties know basis of PB action.
- ❖ 3. It may prevent an appeal.
- ❖ 4. It may limit grounds for an appeal.
- ❖ 5. May be key to defending – or losing – an appeal.



# *Understanding Appeals*

- ❖ Don't Take it Personally!
- ❖ You'd like your "day in court" if you felt "wronged."
- ❖ Understand that we can make mistakes
  - ❖ And then learn from them!





# RTK – RSA 91–A

- ❖ Provides access to proceedings (meetings) and to records (documents, or more broadly, information).
- ❖ RSA 91–A is minimum access
  - ❖ Constitution may be broader.
  - ❖ Litigation rules also likely are broader for both retention and production of documents.
  - ❖ The scope of access continues to broaden.
- ❖ PB must be aware of, and comply with, law.

# Meetings

- ❖ General rule = they are public.
- ❖ Exceptions are narrow and may not be used to “get around” openness requirements.
  - ❖ Notice
  - ❖ Location and accessibility
  - ❖ Chance meetings
  - ❖ Electronic participation
  - ❖ Sequential communication



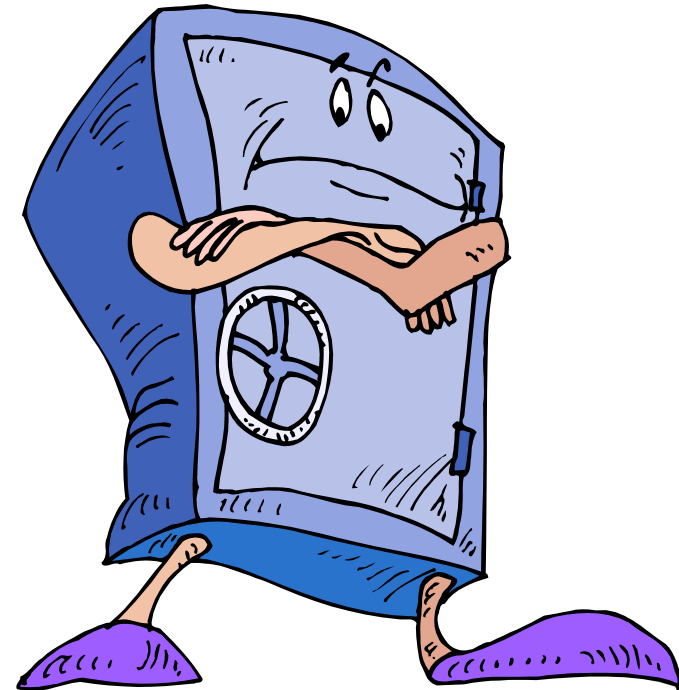
# Nonpublic Meetings

- ❖ Purpose
- ❖ Procedures to enter, conduct, and come out
- ❖ Minutes
- ❖ Can no longer generally use for “deliberations”
  - ❖ “You Mean They Get to Know How We Think?”
- ❖ Transparency is an over-used term today, but in land use proceedings, it can be particularly important.

**PRIVATE**

# Records

- ❖ Definition of record is about as broad as you can imagine
- ❖ Duties to retain and produce
- ❖ Public rights to see and copy them
- ❖ Exceptions are limited and are applied strictly



# Possible RTK Remedies

- ❖ Order to produce
- ❖ Invalidation of action
- ❖ Costs and fees
- ❖ In court, failure to produce may lead to negative inference
- ❖ For lawyers, possible sanctions
- ❖ Advice:
  - ❖ Don't lead a judge to throw the book at you.





# Thank You

Questions, Comments, Concerns



**Ask Now or Contact:**

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